

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on June 4, 2003, and the references cited therewith.

Claims 25 and 30 are amended. As a result, claims 25-30 are now pending in this application.

No new matter is believed to be introduced by such amendments.

§112 Rejection of the Claims and claim objections

Claims 25-30 were objected to for informalities. Such informalities have been addressed by amendments to the claims consistent with the objections. Several other informalities have also been corrected.

Claim 30 was rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 30 has been amended to make it clear that there is one unique key, and that the claim recites a GPS unit.

§103 Rejection of the Claims

Claims 25-30 were rejected under 35 USC § 103(a) as being unpatentable over Behr et al. (U.S. Patent No. 6,107,944) in view of Hornbuckle (WO 90/13865) and Ahrens et al. (U.S. Patent No. 5,951,620). The rejection is respectfully traversed for several reasons.

A prima facie case of obviousness has not been established. Even if the references are combined, they do not suggest or teach each and every element of the claimed invention. Claim 25 now indicates that the unique software key is stored in the GPS unit. Hornbuckle indicates that a key is stored in a remote control module 18, which decodes software and sends it to the target computer for execution. This separate module 18 is key to the operation of Hornbuckle, and there is even discussion of how the operating system on the target computer must be modified to work with it. Thus, there is no teaching of storing a unique software key in a GPS unit, since it is not even stored on the target computer.

By storing the unique software key in the GPS unit, the GPS unit is thus able to include it in a request for data to a software supplier as claimed. This portion of the method claimed is also not possible in Hornbuckle, since as the office action admits, it is the host in Hornbuckle that sends it to the module 18. It is simply not possible using the teaching of Hornbuckle to get the

key to the target computer, nor for the target computer to then send it with a request for data.

The Office Action indicates that it would have been obvious to one of ordinary skill at the time of the invention to have alternatively provided the host with a copy of the client key as part of the initial request, so that both parties have copies of the same key, consistent with the symmetric encryption approach. Since this is not possible in Hornbuckle, the assertion is respectfully traversed. If the Office Action is taking official notice of this capability, the Examiner is requested to provide a reference or affidavit averring such.

The combination of the references also does not disclose the inclusion of payment authorization information in a request as claimed in the independent claims. Payment authorization information is defined in the application as an actual method of payment, such as credit card information or means of electronic payment as indicated on page 8, lines 3-10. It is not merely billing and audit information as described in Behr et al. at col. 14, line 3. The Office Action indicates that the request for updated navigation information in Behr et al. inherently includes payment authorization information. Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency.

As recited in MPEP § 2112, "In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art," citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The Office Action appears to indicate that billing and audit information as well as information identifying the subscriber inherently includes payment authorization. Thus, the Office Action does not even assert that the allegedly inherent characteristic is necessary, let alone provide a basis in fact and/or technical reasoning. Applicant respectfully submits that payment authorization does not necessarily flow from billing information, because billing information may only indicate where to send a bill. It does not inherently authorize payment. Since payment authorization does not necessarily flow from billing information, it is not an inherent characteristic, and the rejection should be withdrawn.

There is no proper suggestion to combine Behr et al. and Hornbuckle. Behr et al. provides information in response to a query to provide route guidance. No other users of the Behr et al. system would likely have need for the same information. There is no need or desire

for encryption in Behr et al. Thus, the statement in the Office Action about “Behr et al.’s desire for sending software only to paying customers were accomplished without pirating/hacking by unauthorized, non paying customers.” is simply untrue. No other customers are likely to even want the information provided in response to specific queries that Behr et al responds to. Thus, the motivation provided for combining the references is unfounded, and the rejection should be withdrawn.

Ahrens et al. has been cited as stating that GPS updating methods can also be used for other types of software. This is not believed relevant to the above distinctions pointed out, as Ahrens et al. is not cited as providing any of the missing elements. While Ahrens et al. may indicate that GPS updating methods can also be used for other types of software, this does not strengthen the motivation to combine Hornbuckle and Behr et al. As indicted above, there is absolutely no need in Behr et al. for any type of encryption. The mere fact that GPS and software updates may be similar does not infer such a need.

Since no weight has been given to the term “aeronautical”, that term has been removed from the claims, and the claims are now not so limited.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743


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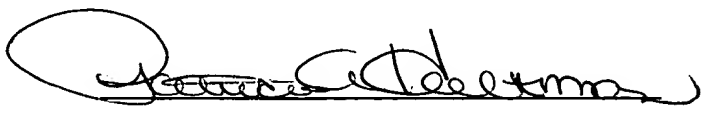
Date 9-4-2003

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PATRICIA A. HULTMAN

Name


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